IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

FRIDAY, THE 5TH JANUARY 2007 / 15TH PAUSHA 1928

WP(C).No. 11708 of 2006(R)

OS.244/2003 of MUNSIFF COURT, PUNALUR
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PETITIONER:

AARIFA BEEVI, W/O.ABDUL MAJEED,
AGED 61, E.A.M.HOUSE, VILAKKUDY VILLAGE,
PATHANAPURAM TALUK.

BY ADV. SRI.S.SREEKUMAR

RESPONDENTS:

A.K.NAZAR, S/O.ABDUL KAREEM,
HOUSE NO.53, SINKARAPETTI STREET, CLHINNA
THARIPPETTU VILLAGE, MYLAPUR TRIPLICKAL TALUK,
CHENNAI.

BY ADV. SRI.B.KRISHNA MANI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 5/1/2007, ALONG WITH WPC NO. 12295 OF 2006 THE COURT ON 05/01/2007 DELIVERED THE FOLLOWING:

APPENDIX:

EXT.P1: COPY OF PLAINT IN OS 244/03 OF MUNSIFF'S COURT, PUNALUR

EXT.P2: COPY OF WRITTEN STATEMENT FILED IN OS 244/03

EXT.P3: COPY OF ORDER DATED 2/6/04 IN IA 1086/03

EXT.P4: COPY OF FAO OF 04 BEFORE SUB COURT, KOTTARAKKARA

EXT.P5: COPY OF OS 117/04 FILED BEFORE MUNSIFF'S COURT, PUNALUR

EXT.P6: COPY OF IA 890/04 BEFORE MUNSIFF'S COURT, PUNALUR

EXT.P7: COPY OF OBJECTION FILED BE PETITIONER TO EXT.P6

EXT.P8: COPY OF ORDER DATED ¼/06 ISSUED BY COURT TO THE DY.S.P. PUNLAUR

EXT.P9: COPY OF REPORT DT.10/4/06 FILED BY DY.S.P

EXHIBITS OF R1:

EXT.R1(a): COPY OF COMMISSIONER'S REPORT DT.10/7/03

EXT.R1(b): COPY OF IA 890/04 DT.10.6.04 FILED BY RESPONDENT

EXT.R1(c): COPY OF ORDER DT.8.2.05

EXT.R1(d): COPY OF ORDER DT.24.3.06 IN WPC 8821/06 OF HIGH COURT, ERKANAKULAM

//True copy//

PA TO JUDGE.

M.SASIDHARAN NAMBIAR,J.

W.P.(C) .NO.11708/06 & 12295/06

Dated 5th January 2007

J U D G M E N T

Petitioner in W.P.(C).12295/06 is the plaintiff in O.S.244/03 on the file of Munsiff court, Punalur. Petitioner in W.P.(C).11708/06 is the defendant in that suit. Plaintiff filed suit seeking a decree for permanent prohibitory injunction. In the suit he filed I.A.1086/03, an application under Order XXXIX Rule 1 and 2 of Code of Civil Procedure. Defendants filed an objection. As per order dated 2/6/2004 learned Munsiff allowed the application and granted an order of temporary injunction till disposal of the suit. Defendants challenged that order before Sub court, Kottarakkara in F.A.O.40/04. It is still pending. When the order of injunction was pending, plaintiff filed I.A.890/04 seeking police protection to enforce the order of temporary injunction. As per order dated 1.4.2006 learned Munsiff under Ext.P6(a) order directed Dy.S.P, Punalur to enforce the order of temporary injunction. First defendant filed

W.P.C.11708/06 under Article 227 of Constitution of India to set aside Ext.P8 communication sent by the Munsiff consequent to Ext.P6(a) order passed in I.A.890/04 directing Dy.S.P to enforce order of temporary injunction. It was contended by petitioner that in spite of appeal filed before the Sub court in 2004, it is not being disposed and therefore a direction was sought to the Sub Judge to dispose the appeal expeditiously. Plaintiff filed W.P.C.12295/06 under Article 227 of Constitution for a direction to first respondent Deputy Superintendent of Police, Punalur to implement the directions issued by the learned Munsiff.

2. Learned counsel appearing for petitioners and respondent and Government Pleader were heard. Adv.S.Sreekumar appearing for petitioner in W.P.C.11708/06 argued that appeal is pending before Sub court, Kottarakkara since 2004 and Sub Judge may be directed to dispose the appeal expeditiously and enforcement of the order of injunction through the police may be deferred till the disposal of F.A.O.40/05. Adv.B.Krishna Mani appearing for petitioner in W.P.(C).12295/06 argued that after hearing the parties order of temporary injunction was

made absolute by the learned Munsiff and when the order of injunction is in force defendants are not entitled to violate the order and in such circumstances Dy.S.P is bound to provide police assistance as directed by learned Munsiff and therefore sufficient direction is to be given to Dy.S.P. Learned Government Pleader submits that Dy.S.P submitted a report before the trial court itself that as property could not be identified, it is not possible to provide police assistance as directed, without assistance of Taluk Surveyor and Village Assistant. Adv.Krishna Mani submitted that there is no difficulty for identifying the property and it was identified by the commissioner.

3. On hearing learned counsel appearing for petitioners and respondent, it is clear that order of temporary injunction granted by learned Munsiff is now under challenge in F.A.O.40/04 before Sub court, Kottarakkara. Learned Sub Judge has to dispose the appeal, without further delay as it is now more than two years old. The appeal was filed challenging an interlocutory order for temporary injunction. Learned Sub Judge, Kottarakkara is directed to dispose F.A.O.40/04 as expeditiously as possible and at any rate within 30 days from the date of receipt of copy of

this judgment. In view of the fact that order of temporary injunction is challenged in F.A.O.40/04, it is only in the interest of justice to defer enforcement of the order of injunction through the police till the disposal of F.A.O.40/04. As and when the F.A.O is disposed of by the Su court and if the appeal is dismissed petitioner is at liberty to approach learned Munsiff for passing an appropriate order to enforce the order of temporary injunction.

Writ petitions are disposed accordingly.

M.SASIDHARAN NAMBIAR,
JUDGE.

uj.